The good news is there are reform efforts under-way in Arizona and at the federal level. The Senate is planning to vote, as early as today, on legislation to place reasonable limits on punitive damages and eliminate unfair allocations of liability in all civil cases. This would protect all Americans—not just the manufacturers of medical products but also small businesses, service providers, local governments and nonprofit groups. Above all, it would save children like Tara. Unfortunately, even if the bill passes, President Clinton has said he will veto it.

I'm not a legal expert. I'm just a desperate mother. But I know that reasonable changes must be made to protect everyone. Enact civil justice reform. Don't take hope away from Tara.

Mr. BURNS. Mr. President, I rise today in support of the conference report to H.R. 956, The Commonsense Product Liability Legal Reform Act of 1995.

This is an important piece of legislation that is the result of more than a decade's worth of effort. I would like to congratulate the members of the Conference Committee, led by Senators GORTON and ROCKEFELLER, on their diligence in coming up with a final conference report.

This bill will help to reign in unnecessary, costly, and time-consuming product liability cases. There is a lot of talk in this town about cutting regulations and making American companies more competitive. But when the talk is over nothing much has changed.

The product liability bill originally passed the Senate more than 10 months ago after prolonged debate. The final conference report is similar to the Senate-passed bill in scope and focus rather than the wide-sweeping reform found in the House bill.

This bill is conspicuous not for what is in it, but for what is missing. The House approved sweeping legal reform last year that would have addressed other civil cases, besides products, including lawsuits against doctors, charities, and volunteer organizations.

However, it does have important provisions on punitive damages, joint and several liability, statute of limitations, statute of repose, workers' compensation subrogation standards. It also covers product sellers and States rights.

This bill does not work against consumers; nor is it for manufacturers. In fact many proponents of products liability reform who had hoped and worked for broader reform are disappointed in its narrow scope. H.R. 956 merely attempts to block the free-for-all that has taken hold of our court system.

Everybody wins under this bill. Consumers will see products ranging from football helmets to life-saving new drugs become more widely available and less costly.

And it will not limit the legitimate rights of victims to sue or to receive full compensation for their injuries.

This legislation is a good step in the right direction. It will not stop lawsuits, but it will put some restraints on the out-of-control legal battles we have seen in recent years.

That is why it is so frustrating to hear President Clinton say that the reforms included in the bill go too far. This was a bipartisan effort to get a bill that would be enacted into law.

Negotiations between the House and the Senate were tempered with caution to ensure that it would get the support needed to be passed by the Senate.

Once again efforts by reform-minded folks in Congress is threatened by a President that has put plaintiff lawyers interests above those of regular Americans. Politics once again rears its ugly head. The losers are consumers, manufacturers, and true victims who find themselves locked in a case-clogged court system.

Mr. President, once again I ask my colleagues to take a close look at this legislation and vote in support of cloture.

CONTINGENCY-FEE LAWYERS' NONSENSE ABOUT THE COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT OF 1996

Mr. GORTON. Mr. President, a document being circulated by the Association of Trial Lawyers of America [ATLA] and their allied professional interest groups makes the accusation that the conference report on H.R. 956, the Commonsense Product Liability and Legal Reform Act of 1996, is radically different than the bill passed by the Senate. The contingency-fee lawyers' argument about commonsense product liability reform is unfounded.

Anyone who reads the conference report and compares it to the Senate bill can see for themselves that, except for change in the time period, not the narrow scope, of the statute of repose and two slight modifications to the additional amount provision, the conference report is virtually identical to the Senate bill. All familiar with the history of this bill also know House Members delayed going to conference, and then agreeing on a conference report, for almost a year until it became apparent that Senate allies of the trial bar would not support legal fairness legislation going beyond the Senate bill.

Facts are a stubborn thing for these lawyers, because as hard as they try to avoid them or argue around them or simply ignore them, as is often the case, the facts never change. And, the fact is that the product liability conference report is a narrow and limited proposal that almost mirrors the Senate's version of H.R. 956.

STATUTE OF REPOSE

H.R. 956, contains a narrow statute of repose, which places an outer time limit on stale litigation involving a limited category of products, workplace durable goods, that is, machine tools used in the workplace, that are over 15-years old. If the defendant made an express warranty in writing as to the safety of the specified product involved, and the warranty was longer than the period of repose—15 years—then the statute of repose does not apply until that warranty period is complete. The provision does not apply in any case involving a toxic harm, or in any case involving motor vehicles, vessels, aircraft, or trains used primarily to transport passengers for hire.

The only difference between the conference report and the Senate bill is the conference report's 15-year period; the Senate bill contained a 20-year limitation. Otherwise, the provision, including the limited category of products covered, is unchanged.

Approximately one-third of the States have enacted statute of repose legislation; no State provides a more liberal time period or is more favorable to potential plaintiffs in terms of its scope that the narrow provision in H.R. 956. Support is also found by comparing the proposed 15-year period to the laws of industrial nations which directly compete with the U.S. to provide jobs. The EC Product Liability Directive, implemented by 13 European nations and Australia, and Japan's new product liability law, which became effective July 1, 1995, each adopt a 10-year statute of repose which applies to all products. H.R. 956 will help level the playing field against foreign competitors abroad which put American jobs at risk.

The contingency-fee lawyers argue that the conference report extends the statute of repose to virtually all goods. This statement is wrong. Section 101(7) of the conference report narrowly defines the term Durable good as follows:

DURABLE GOOD.—The term ''durable good'' means any product, or any component part of any such product, which has a normal life expectancy of 3 or more years, or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986 *and which is—*

(A) *used in a trade or business;*

(B) held for the production of income;

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose. (Emphasis added).

Both the conference report and the Senate bill only apply to goods which have either a normal life expectancy of 3 or more years or are of a character subject to allowance for depreciation under the Internal Revenue Code of 1986 and are used in a trade or business, held for the production of income, or sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose. A machine tool is an example of product with a long life expectancy, subject to depreciation, which is used in trade or business.

The contingency-fee lawyers are misleading the public to believe that the workplace use limitation has disappeared from the conference report. It has not.

THE ADDITIONAL AMOUNT OR ADDITUR PROVISION

Recognizing that a flexible approach to punitive damages is likely to deliver strong bipartisan support for legal reform, opponents have challenged the constitutionality and content of the provision in H.R. 956 which permits a judge a safety valve to go beyond the

proportionate limits set for punitive damages against larger businesses and award additional punitive damages (up to the amount of the jury verdict) in cases of egregious conduct in a desperate effort to shake support. The provision is constitutional and represents good public policy.

The conference report additional amount provision, as mentioned, contains two slight modifications to the Senate bill. First, a controversial provision in the Senate bill that would have allowed the defendant the right to a new trial if the court used award an additional amount of punitive damages has been removed from the legislation and does not appear in the conference report. This change was made in response to requests from the administration and several Senators just before the final Senate vote. The absence of the new trial language does not affect the constitutionality of the provision. Research by the U.S. Department of Justice indicates that the safety valve provision in H.R. 956 is constitutional.

Second, the Senate bill language was modified in the conference report to clarify that the additional amount which can be awarded may not exceed the jury's initial award of punitive damages. The jury is not informed of the statutory limit. This language strengthens the constitutional foundation of the provision. Opponents' seventh amendment right to jury trial arguments are without merit.

PRODUCT LIABILITY DOES NOT EXTEND TO NEGLIGENT ENTRUSTMENT

Once again opponents are trying to mislead and confuse product liability actions, which are covered by the conference report, with negligent entrustment cases, which are not covered by the legislation. As in the past, they use attention-getting, but irrelevant examples, such as drunk driving cases and gun violence.

The trial lawyers' hollow argument is based on the applicability section of the conference report, which says that the act applies to any product liability action brought in any State or Federal court on any theory for harm caused by a product. The reason for this broad definition is to assure that the bill covers all theories of product liability, that is, negligence, implied warranty, and strict liability. The argument then looks to the section dealing with product sellers, which imposes liability when a product seller fails to exercise reasonable care with respect to a product. The argument continues that a product seller's failure to exercise reasonable care in selling a gun to a minor, convicted felon, or mentally unstable individual would not be actionable, because the product seller was negligent with respect to the purchaser and not the product.

This argument reflects an obvious misconstruction of the bill. To make this clear, one only need look to the acts covered by product sellers in the conference report. This appears in the definition of product seller. The bill says that it is applicable to product sellers, but only with respect to those aspects of a product, or component part of a product, which are created or affected when before placing the product in the stream of commerce. The definition then addresses those things where the product seller produces, creates, makes, constructs, designs, or formulates * * * an aspect of the product * * * made by another. See §101(14)(B). This is classic product liability.

To make the point crystal clear, the product seller section specifically provides that the conference report does not cover negligent entrustment or negligence in selling, leasing or renting to an inappropriate party. Section 103(d) expressly states: A civil action for negligent entrustment shall not be subject to the provisions of this section but shall be subject to any applicable State law.

For these reasons, the bill would not cover the situation described by the trial lawyers. It also would not cover a seller of liquor in a bar who sold to a person who was intoxicated or a car rental agency that rents a car to a person who is obviously unfit to drive.

In sum, the product liability bill covers product liability, not negligent entrustment or failure to exercise reasonable care with regard to whom products are sold, rented or leased.

TRIAL LAWYERS' OTHER ARGUMENTS ARE SIMILARLY WITHOUT ANY MERIT

The trial lawyers' desperate attempt to portray the conference report as to the right of the Senate bill includes a couple of other minor points which are so hollow and petty that they deserve only brief attention. First, the notion that the conference report expands the product seller section beyond the Senate bill, changes burden of proof rules for persons who irresponsibly misuse or alter products or seek punitive damages is completely meritless. The falsity of these arguments is apparent from the language of the conference report and the Statement of Managers. Second, the argument that the findings in the legislation are not supported is foolish. The subject of Federal product liability reform has been reviewed by Congress for 15 years and been the subject of hundreds of hours of hearings and floor debate.

Mr. SPECTER. Mr. President, I am voting for cloture on the conference report on product liability legislation because I believe, on balance, that the issue should be decided by a majority vote of the Senate.

In deciding to support cloture, I am significantly influenced by the fact that the conference report corrects my principal concern: punitive damages on egregious cases.

A decision on whether to support cloture depends upon a variety of factors such as whether there should be more debate to fully air the issues or whether a constitutional issue or some other fundamental matter is involved which warrants a super-majority of 60.

In the past, I have voted for cloture on product liability legislation in circumstance where I thought the matter should reach the Senate floor for a majority vote.

On this state of the record on this bill, I think there should be a majority determination, so I am voting in favor of cloture.

Mr. COATS. Mr. President, I rise today to urge my colleagues' support for this very important product liability reform legislation. This legislation is a conservative, but significant attempt to begin the process of curbing a civil justice system gone awry, a system that has been overwhelmed by the logistical burdens and economic costs of unnecessary and unwarranted litigation.

Mr. President, it is very appropriate that Congress begin to address this broad problem in the area of product liability reform. For it is this area of law that has become, perhaps, the most unruly, and which is having an increasingly adverse impact on the U.S. economy. There are several important provisions contained in this bill. However, I will limit my comments to the section dealing with biomaterials.

The purpose of this section is to provide a defense to the suppliers of biomaterials, or parts, which are used in the manufacture of implantable medical devices. What this section will do is insure the continued availability of the raw materials that are absolutely critical to the development of implantable medical devices. Under the current legal system, claimants who sustain harm from a medical device are encouraged to go after the company with the deepest pockets, the one they can get the most money from. Often times, this entity is the innocent supplier of the raw, biomaterials, that are utilized in the manufacturing of the device. This, in spite of the fact that the biomaterials supplier did nothing to cause the injury or harm.

Mr. President, the result of this vicarious liability on the part of the biomaterials supplier is that, economically, they cannot afford to supply the materials to the manufacturer because the risk of being innocently swept up into litigation is too high. You see, the volume of material they provide to the bio-manufacturer represents such a small percentage of their total sales that it is simply not cost effective to take the risk. They are driven out of the market by the risk of litigation.

Located in my home State, Mr. President, in Bloomington, IN, there is a very special company: Cook International. This company truly represents what is great about our economic system. Unfortunately, it also represents how a system gone awry can harm both business and the consumer.

Cook International manufactures medical devices. One product line is medical catheters. These catheters are high precision devices used for various medical procedures.

A true American success story, Cook International began operating out of

the founder's home. It has rapidly grown into an international corporation manufacturing the very finest in precision medical catheters. Vital to these instruments is teflon. However, under the threat of potentially being swept up in a product liability law suit, Cook's suppliers have served notice that they will soon cease to provide the vital materials for the manufacture of these life saving catheters.

Without this legislation, Mr. President, companies like Cook will be forced to find new suppliers of biomaterials or simply cease to manufacture these products. The costs of this result can be measured in lost time, lost jobs, and lost lives.

Mr. President, this is a very simply provision. If a company meets all specifications of the manufacturer; if they are in no way involved in the actual manufacturing or sale of the biomedical device; if they have acted in good faith in meeting their contractual obligation to the manufacturer; they cannot be swept up in a product liability lawsuit simply because they have deep pockets. This is fundamentally fair.

I urge my colleagues to support this very responsible effort at reforming our product liability legal system. I urge them to do so in order to preserve and ensure the growth of the American manufacturing industry. I urge them to do so because it is absolutely vital to our biomedical industry.

Ms. MIKULSKI. Mr. President, today, I will vote against cloture on the Product Liability Reform Act conference report. I believe the Senate should have a careful and thorough debate on the consequences of this conference report.

We should not close the courthouse door to those with legitimate grievances. Nor should we close debate on an issue as serious and far-reaching as product liability reform. I particularly do not want to close debate when there is disagreement on the consequences on this conference report.

Mr. President, I voted for the Senate's version of the product liability bill. I absolutely believe Congress should enact a reform measure to reduce frivolous law suits and have national uniform product liability standards. I also believe that when it comes to public health and safety, those who are responsible must be held accountable for their actions.

The Senate bill achieved a balance which addressed the valid concerns of the business community while protecting the rights of citizens with legitimate cases. That's why I voted for it.

I made it clear at the time that moving beyond the Senate bill was unacceptable to me. I said, ''To move beyond the Senate bill would be a mistake. The scales on this are delicately balanced. If those scales are tipped, it is unlikely I will support this bill.''

Mr. President, over the past several days, I have carefully assessed the conference report on product liability. I have weighed the arguments made by its supporters and its opponents. Always I have asked whether the conference report represents the same bill I voted for in 1995, or whether it was changed, tilting the delicate balance I talked about last spring.

Let me be clear. I do believe we need reform in this area. My job as a U.S. Senator is to save jobs, to save lives, and to save communities. I do want to reduce frivolous lawsuits. I want to remove barriers which stifle innovation. I want us to be economically competitive.

At the same time, public health and safety are paramount with me. I want consumers to have some assurance that the products they use are safe. And if products are defective and cause harm, consumers should know they can seek justice and redress through our courts. I do not want to shut the courthouse door to people with legitimate claims.

That's why I have grave concerns about this conference report. This conference report does, indeed, tip the balance.

Let me tell you why:

First of all, under the conference agreement, consumer products not covered by the Senate bill will now be covered. The caps and other restrictions under the conference report apply to a wide range of consumer products and appliances, not just to those used in trade or business.

Second, the conference report adds another barrier to people who are seeking punitive damages. Under its provisions, an injured person will now have to demonstrate that the wrongdoer's conduct was the proximate cause of harm instead of merely resulting in harm. This is a much more difficult standard.

Third, the bill could unacceptably shift the burden of proof in cases where the alcohol and drug defense is used. Under our Senate bill, a defendant was required to prove the plaintiff was under the influence of drugs or alcohol. This conference agreement leaves this issue entirely up to the States.

Finally, the conference report fails to specifically state that the 2-year statute of limitations will be suspended in cases where a court has issued a stay or injunction. The Senate bill was quite clear on this point. I fear the conference agreement's silence on this issue will result in injustice.

For instance, in cases similar to the Dalkon Shield case, a court could issue a stay, and the statute of limitations could run out for people who have legitimate claims. I fear this defect in the conference report will prevent women who have suffered from defective products from seeking justice.

Mr. President, I know there are disagreements on each of the points I have just outlined. I know that people interpret the conference agreement's language on these and other issues in very different ways.

But, I must say that these very differences of opinion have reinforced my conclusion that I must oppose cloture and this conference agreement. When there are such deep and serious differences about the impact of this legislation, I must lean on the side of protecting consumers. I must place my obligation to protect public health and safety first.

Therefore, I will oppose cloture today. And I will oppose this conference report.

Mr. President, before concluding my remarks, I must acknowledge the tremendous work done by my esteemed colleague, Senator ROCKEFELLER, on this legislation. He has fought diligently to uphold the Senate's position on product liability reform. And, I must say that he has succeeded on a number of issues. His fight has been a valiant one, and I regret that I am not able to stand by his side today.

Let me just say, this year is not over yet. Many of us want genuine reform we can all support. Although I cannot support the conference agreement before us today, I hope we can go back to the drawing board. I want us to produce a bill which reflects the balance that is needed between the concerns of business and those of consumers. I would be proud to support such a bill.

Mr. HATCH. Mr. President, I rise in strong support of the conference report to the Product Liability Fairness Act.

I would first like to commend and congratulate my distinguished colleagues, Senators GORTON, ROCKEFELLER, and PRESSLER for their longstanding leadership on this issue and on this bill. They have labored long and hard over several Congresses to come up with a bill that is measured and fair, and that will accomplish meaningful and important reforms of our product liability system.

This bill will benefit American workers and consumers. The only people who may be truly hurt by this bill are some of the Nation's trial lawyers.

I hope this bill will not fall victim to election year politics. It is a good bill and one that we have needed for a long time.

When this bill was on the Senate floor last spring, I supported efforts to broaden it so that its key provisions on punitive damages and joint and several liability would apply to all civil lawsuits.

We succeeded in passing a Dole-Exon-Hatch amendment to broaden the punitive damages provision. Unfortunately, the bill with that provision in it could not survive cloture and the amendment was removed.

While I continue to support broader civil justice reforms—and would particularly like to see this Congress at least enact a bill to protect religious and nonprofit organizations and volunteers from excessive punitive damage awards—I offer my enthusiastic support to this product liability bill.

Even though it is a modest bill, it represents a significant step in the right direction toward removing some

of the outrageous litigation abuses in our system.

Anyone who has looked at the substance of this bill will realize that this is a limited, reasoned effort that is long overdue. This bill should not even raise the question of a Presidential veto.

But unfortunately, it has.

The ink was barely dry on this compromise bill before the President, coming to the defense of a limited and narrowly focused interest group—trial lawyers—and at the expense of American competitiveness, American jobs, and American consumers, declared he would veto this bill.

For the sake of our constituents across the Nation, we should be crystal clear about where the opposition to this sensible bill comes from. It does not come from the American people, and it does not come from American workers and consumers.

Product liability reform is supported by the overwhelming majority of Americans. They have indicated their frustration with crazy lawsuits, outrageous punitive damage awards, and abusive litigation. They see a complete lack of common sense in our civil justice system.

They want change from a status quo that has been unfair and that has encouraged irresponsible litigation in this country. It is our responsibility to deliver that change. And it should be the President's responsibility to sign this bill.

Given the President's last-minute veto of the securities litigation reform bill, which came following appeals from a few well-placed, well-heeled trial lawyers, we probably should not be surprised by the President's obstructionist position on this bill.

Despite the sincere, tireless efforts of a leading member of his party, Senator ROCKEFELLER, to work out a bipartisan position, the President has apparently opted to defend the status quo.

Senator ROCKEFELLER should take some heart in the fact that while he may be no more successful in selling this bipartisan bill to the White House than his colleague Senator DODD was in selling the securities litigation bill, Senator DODD ultimately crossed the finish line.

We should at least be clear that the President's opposition to this bill comes only from the well-heeled trial lawyers who have taken advantage of our litigation system for their own benefit.

For too long, our citizens have been the ultimate victim of lawsuits and threats of lawsuits that go beyond the bounds of common sense. It often is not fair, and it often is very extreme.

By some estimates, nearly 90 percent of all companies can expect to become a defendant in a product liability case at least once. Estimates of the costs of product liability litigation range from $80 to $117 billion per year. That is simply too high.

Our national resources should not be misdirected to pay for extreme and unproductive litigation costs. We heard many, many references to these costs when this bill was on the floor last spring. We heard that 20 percent of the price of a ladder goes to pay for litigation and liability insurance, that one-half of the price of a football helmet goes to liability insurance, and on and on. Just who does President Clinton think is paying these additional costs?

This bill seeks to reduce the litigation tax burdening our economy and stifling innovation and job-growth. At the same time, it aims to ensure that those individuals who are harmed by defective products are compensated by the parties who rightfully should bear responsibility for wrongdoing.

This is an important point given the disinformation circulating about this bill. This legislation does not deprive any American of his or her right to sue.

We need these reforms because it has become evident that we cannot address these problems comprehensively without a uniform, nationwide solution to put a ceiling on at least the most abusive litigation tactics.

Products produced in one State move in interstate commerce. Manufacturers, product sellers, and individuals from one State may find themselves being sued in another State.

We need to protect citizens of some States from the product liability litigation costs imposed on them by other States' legal systems.

We need to assist those affected by laws in States where the legislatures have attempted reforms only to be thwarted by some State courts.

This bill does that by encouraging commonsense, responsible, and fair litigation.

For one, this bill reforms joint and several liability. I have spoken before about a case against Walt Disney World in which Walt Disney World was judged to be only 1 percent at fault for injuries a woman suffered when her fiance rammed into her on a grand prix ride at Disney World. Under principles of joint and several liability, Disney World was forced to pay 86 percent of the damages. (*Walt Disney World Co.* v. *Wood*, 515 So.2d 198 (Fla. S. Ct. 1987).)

This bill strikes a sensible balance by limiting joint and several liability to economic damages. This fairness approach means that defendants will be chiefly responsible for the harm that they cause rather than the harm caused by other defendants.

Other provisions also promote fairness. It is 100 percent wrong to paint them any other way.

Take the 2-year statute of limitations. That gives parties a reasonable time in which to take legal action after they know, or should have known, of an injury and its cause, at the same time that it prevents late-in-the-day lawsuits.

Who can argue with these commonsense provisions, except some of our Nation's trial lawyers who benefit from the increased fees they receive from unfair recoveries?

The bill imposes liability on product sellers only under certain circumstances in which the product seller is responsible for the safety of the product it sells. A product seller should not be held hostage to a lawsuit if the manufacturer caused the damage and the plaintiff can and should be suing the manufacturer.

The bill similarly provides that those who rent or lease products should be liable only where they themselves have actually been negligent or otherwise responsible for the harm—not where they are simply in the supply chain and have done nothing wrong.

The bill provides a defense if the plaintiff was intoxicated or under the influence of drugs and if that accounted for more than 50 percent of the responsibility for the harm caused. What is wrong with that provision?

The bill reduces damages payable by a manufacturer if harm is caused by any misuse or alteration of the product.

The bill includes a limit on punitive damages in product liability cases of two times the amount of economic and noneconomic losses. That permits an adequate punishment where punishment is called for, but puts some restraint on runaway punitive damages.

We did make some accommodations in this provision, including an exception allowing judges to go beyond the limits of the bill. This provision was tightened up in conference, and I think it was improved somewhat. Although I continue to have some reservations that the additur provision represents a weakening of the bill's punitive damages provision, I support this bill.

The provision that we added on the floor to protect small businesses has remained in the conference report. That provision applies to small businesses having less than 25 employees and individuals whose net worth does not exceed $500,000. In cases involving either of those as defendants, punitive damages cannot exceed the lesser of $250,000 or two times economic and noneconomic losses.

This worthy provision prevents small businesses and individuals from facing punitive damages in excess of $250,000.

The conference report adopts the House version of the statute of repose, which sets a 15-year limit beyond which manufacturers could no longer be sued in a product liability action. Of course, other parties having physical responsibility for the product, like product sellers or renters, would continue to bear responsibility.

I believe it is important to stress that punitive damages are in addition to make whole, compensatory relief. The administration produced its policy with respect to the Gorton substitute product liability bill on April 25, 1995, and was critical of the punitive damage limitations in the bill.

In the President's statement this past weekend indicating that he would veto this legislation, the President again criticized the punitive damages

provisions—even though those provisions have since been modified in an attempt to address his concerns.

On May 2, 1995, I received a letter from Prof. George Priest of the Yale Law School responding to the administration's policy. I think he gets to the heart of why the administration's concerns then and now are misplaced, in error, and an excuse to veto this bill.

Let me read from that letter.

Professor Priest—responding to the bill's then punitive damages limit of three times economic damages or $250,000, whichever is greater—writes:

The Administration opposes the cap on punitive damages on the grounds that the cap ''invites a wealthy potential wrongdoer to weigh the risks of a capped punitive award against the potential gains of profits from the wrongdoing.

I note that the administration used that exact same phraseology in its statement of administration policy issued on March 16, 1996.

Professor Priest went on to write:

Meaning no disrespect, the administration's position displays a naivete unworthy of the serious problems created for consumers and low-income consumers, in particular, by the current absence of limits on potential punitive damages awards.

The administration appears to criticize and to want to prevent the calculation by potential defendants of future potential damages. That position cannot be sensibly maintained because it ignores the only purpose of punitive damages, which is to deter. There can be no deterrence without a calculation of a possible future penalty. The entire system of punitive damages is premised on the hope that potential wrongdoers will engage in such calculations and decide against engaging in harm-causing behavior. If there were no such calculations, there would be no deterrent effect. The issue, thus, is what the level of potential punitive damages ought to be in order to obtain appropriate deterrence.

Although the administration does not address the issue, it is well established in the analysis of modern tort law (and hardly controversial within the academy) that the calculation of compensatory damages alone is sufficient to create the appropriate deterrence of loss. Additional punitive damages awards surely reinforce the deterrent effect of compensatory damages, but at a cost: Where punitive damages awards are excessive or unpredictable (which the administration seems to want), producers are deterred from sales altogether and withdraw products and services from markets. Excessive or unpredictable punitive damage awards, thus, harm consumers and low-income consumers most of all because low profit margin products and services are the first to be withdrawn.

Many scholars believe (and I am among them) that the current problems created by excessive punitive damages are so severe that a cap of three times economic damages is still too high and that consumers—again, especially the low income—would benefit from a stricter cap.

I think that statement accurately and precisely sets out the reasons that I and so many others have come to the conclusion that punitive damages must be limited to benefit consumers. It is simplistic and inaccurate for opponents of this bill to claim that unlimited punitive damages benefit consumers. They do not.

I note that the proportionality limit in the current bill was moderated to two times the sum of economic and noneconomic damages.

Simply put, all of the provisions in this bill are commonsense provisions that level the playing field and encourage fairness in our product liability system. They are changes that Americans want and deserve.

I could go on and on about ridiculous product liability cases that Americans are sick of hearing about.

Everyone has heard of the McDonald's coffee case, but remember the McDonald's milkshake case? I spoke at length about that on the floor last spring.

A man had purchased a milkshake at the McDonald's drive-through, put it between his legs, spilled it all over himself, and got into an accident with another driver. That driver sued McDonald's on a product liability theory and claimed that McDonald's should have warned the milkshake drinker not to drink milkshakes and drive. (*Carter* v. *McDonald's Corp.*, 640 A.2d 850 (N.J. 1994).)

Or how about the president of the Dixie Flag Manufacturing Co. who testified before the Commerce Committee last April. His company was sued by a man who stopped to help some employees at another company lower a flag. The man claimed that, while holding the flag, he was blown off the ground by a strong gust of wind and that the flag ripped, causing him to fall and hurt himself. He sued the flag company, claiming that the flag was unreasonably dangerous. That is bad enough, but what is worse is that there was no evidence that Dixie Flag had even sold the flag at issue.

We have just got to restore some common sense into our legal system.

The examples and the abuse go on and on.

Our large and small businesses and our consumers and workers are being overwhelmed with litigation abuse.

The vice president of the Otis Elevator Corp. provided us with information indicating that his company is sued on the average of once a day. Once a day.

Although Otis wins over 75 percent of its cases, on average over the past 3 years it has spent $20 million per year on liability costs, about half of which has gone to attorneys' fees.

These are staggering costs that should take our breath away. They represent resources which could be going to create new jobs or undertake new advancements. Our national resources should be going to productive uses—not to unnecessary and overblown litigation and insurance costs.

In short, I hope the Senate will stand up for what is right and what the American people want and need. We should send this bill to the President.

And, the President should sign it.

Mr. DOLE. Mr. President, there is a broad bipartisan consensus that we must do more to curb lawsuit abuse in America—the kind of abuse that has turned suing your neighbor into the newest American pastime.

This bipartisan compromise bill is an important first step: It will restrain outrageous and costly lawsuits that inhibit economic growth, threaten small businesses, and inflict a litigation tax on American consumers of $152 billion a year—that's right, $152 billion a year.

I want to congratulate Chairman PRESSLER, and particularly Senators GORTON and ROCKEFELLER for their hard work—years of hard work, really—on this important legislation. I also want to thank Senator LOTT for his assistance in resolving the differences between House and Senate.

But despite all the work, all of the bipartisanship, all of the sweet whispers of support out of the White House, suddenly we are voting on a bill that is under a threat of veto.

Why? Well, let us take a look at what President Clinton said last Saturday when he issued his veto threat. President Clinton said that he was concerned about federalism and an ''unwarranted intrusion on State authority.'' But this argument was long ago dismissed by such concerned parties as the National Governors Association. In fact, the Governors, including then-Governor Clinton, called for a uniform national standard, stating that it would ''greatly enhance the effectiveness of interstate commerce.''

In other words, this sudden attack of States rights fever is misplaced.

President Clinton also said last Saturday that he was concerned the bill would ''prevent injured persons from recovering the full measure of their damages.'' But compensatory damages are not affected by this legislation at all. And punitive damages are available for exactly those situations for which they were intended—situations which involve wrongdoing or egregious conduct.

That is what the President said.

What the President did not say however was that he has been under enormous pressure to veto this measure from the wealthiest and most powerful special interest lobby in America: the trial lawyers.

Mr. Clinton has been one of the most-favored recipients of their largess. The Center for Responsive Politics found that lawyers and lobbyists funneled a grand total of $2.6 million to Mr. Clinton's 1992 campaign. That of course vastly understates the real number, since it is often impossible to identify the source of the real donors. In just the first 9 months of 1995, lawyers and law firms have pumped another $2.5 million into the President's campaign coffers.

If money talks, this money screams. And what it screams is very simple: kill each and every attempt at legal reform. Now, I'm not one to assume just because someone gives you money, they call the tune. But this message has apparently been heard down at the White House loud and clear.

Consider the record: President Clinton instigated a filibuster to stop legal

reform that covered small business and charities and volunteer organizations last year.

President Clinton pulled a much-publicized flip-flop and vetoed the securities litigation reform late last year. Fortunately, Congress overrode his veto.

President Clinton now threatens to veto a modest and bipartisan bill that he once suggested he would support.

This is unfortunate, but how it happened is worse.

Before he said he would veto this bill, President Clinton's allies did something very cynical. Mr. Clinton's friends on the Hill made sure that the protections from lawsuit abuses in this compromise bill would not be extended to charities and nonprofits.

Why would they do that? Everyone professes to want such protections passed into law. Yet, they insisted.

Well, obviously, it would have been more difficult to veto a bill that offered protections for charities and volunteer organizations. It would have interfered with posturing as the defender of the little guy. So, those protections had to go. And 2 days after those protections were deleted by his allies, President Clinton issued his veto threat.

I don't intend to play this game. Charities and volunteer organizations deserve relief, not cynical politics as usual.

Elaine Chao, president of the United Way of America, recently wrote a passionate plea calling for protections for charities, so caseworkers in family counseling agencies, literacy tutors, and volunteer fundraisers won't be chased away by the threat of liability.

All Americans should be outraged, as Elaine Chao puts it, by ''the proliferation of frivolous lawsuits that treat charities and nonprofits as pinatas, as so many bags of goodies to be plundered.''

That's why Senator HATCH and I have introduced a bill that provides such relief. Our bill would protect charities and nonprofits like the Little League and Girl Scouts. I intend to bring it to the floor for consideration as soon as possible.

The President and his allies will then be asked to make a simple choice between protecting charities or enriching trial lawyers.

President Clinton, please do not block this measure again. Do not let the heavy hand of special interests stay the helping hand of charities.

Mr. President, with nearly 19 million new suits filed per year—1 for every 10 adults—no one is immune from the lawsuit epidemic. The cost of defending yourself in an average, nonautomotive case is about $7,500. That is money you lose even if you win your case.

The lawyers, of course, never lose. It is time that this stopped.

I hope President Clinton will reconsider his ill-advised veto threat. In the meantime, I urge my colleagues to pass this bill.

Mr. ABRAHAM. Mr. President, I rise today in support of H.R. 956, a bill to reform product liability law.

A few months ago, the 104th Congress took the first momentous step toward legal reform. Over President Clinton's veto, we passed H.R. 1056, a bill to reform securities litigation.

This legislation will significantly curb the epidemic of frivolous lawsuits that are diverting our Nation's resources away from productive activity and into transaction costs.

In passing H.R. 956, the Senate will be taking an equally important second step on the road toward a sane legal regime of civil justice.

Our current legal system, under which we spend $300 billion or 4.5 percent of our gross domestic product each year, is not just broken, it is falling apart.

This is a system in which plaintiffs receive less than half of every dollar spent on litigation-related costs. It is a system that forces necessary goods, such as pharmaceuticals that can treat a number of debilitating diseases and conditions, off the market in this country.

This is a system in which neighbors are turned into litigants. I was particularly struck by a recent example reported in the Washington Post. This case involved two 3-year-old children whose mothers could not settle a sandbox dispute—literally, a preschool altercation in the sandbox—without going to court.

Something must be done about this situation and this litigious psychology, Mr. President, and this bill puts us on the road to real, substantive reform.

It institutes caps on punitive damages, thereby limiting potential windfalls for plaintiffs without in any way interfering with their ability to obtain full recovery for their injuries.

It provides product manufacturers with long-overdue relief from abusers of their products.

And it protects these makers, and sellers, from being made to pay for all or most noneconomic damages when they are responsible for only a small percentage.

First, as to punitive damages. No one wants to see plaintiffs denied full and fair compensation for their injuries. And this bill would do nothing to get in the way of such recoveries.

Unfortunately, punitive damages have come to be seen as part of the normal package of compensation to be expected by plaintiffs. George Priest of the Yale Law School reports that in one county, Bullock, AL, 95.6 percent of all cases filed in 1993–94 included claims for punitive damages.

Punitive damages are intended to punish and deter wrongdoing. When they become routine—one might say when they reach epidemic proportions—they end up hurting us all by increasing the cost of important goods and services.

For example, the American Tort Reform Association reports that, of the $18,000 cost of a heart pacemaker, $3,000 goes to cover lawsuits, as does $170 of the $1,000 cost of a motorized wheelchair and $500 of the cost of a 2-day maternity hospital stay.

We can no longer afford to allow this trend to continue. I am glad, therefore, that this bill begins to cap punitive damages—although in my judgment it only makes a beginning in that area.

I am particularly glad that the bill imposes a hard cap of $250,000 on punitive damages assessed against small businesses—the engine of growth and invention in our Nation.

Of course, punitive damage awards are not the only things increasing the costs of needed products.

Throughout the debate over civil justice reform I have been referring to the case of Piper Aircraft versus Cleveland. I use that example because it shows how ridiculous legal standards can literally kill an industry—as they did light aircraft manufacturing in America—and cost thousands of American jobs.

In Piper Aircraft, a man took the front seat out of his plane and intentionally attempted to fly it from the back seat. He crashed, not surprisingly, and his family sued and won over $1 million in damages on the grounds that he should have been able to fly safely from the back seat.

These are the kinds of decisions we must stop. Drunken plaintiffs, plaintiffs who abuse and misuse products—plaintiffs who blame manufacturers and sellers for their own misconduct—should not be rewarded with large sums of money. They may deserve our concern and sympathy, but we, as a people, do not deserve to pay for their misconduct through the loss of entire industries.

I am happy that this bill establishes defenses based on plaintiff inebriation and abuse of the product because I believe these defenses will benefit all Americans.

Finally, it seems clear to me that no manufacturer should be held liable for noneconomic damages which that individual or company did not cause.

In its common form, the doctrine of joint liability allows the plaintiff to collect the entire amount of a judgment from any defendant found partially responsible for the plaintiff's damages.

Thus, for example, a defendant found to be 1 percent responsible for the plaintiff's damages could be forced to pay 100 percent of the plaintiff's judgment.

This is unfair. And the unfairness is aggravated when noneconomic damages are awarded.

Noneconomic damages are intended to compensate plaintiffs for subjective harm, like pain and suffering, emotional distress, and humiliation.

Because noneconomic damages are not based on tangible losses, however, there are no objective criteria for calculating their amount. As a result, the size of these awards often depends more

on the luck of the draw, in terms of the jury, than on the rule of law. Defendants can be forced to pay enormous sums for unverifiable damages they did not substantially cause.

This bill would reform joint liability in the product liability context by allowing it to be imposed for economic damages only, so that a defendant could be forced to pay for only his proportionate share of noneconomic damages.

As a result, plaintiffs would be fully compensated for their out-of-pocket losses, while defendants would be better able to predict and verify the amount of damages they would be forced to pay.

This reform thus would address the most pressing concerns of plaintiffs and defendants alike.

Mr. President, problems will remain with our civil justice system after this bill is made into law—if this bill is signed by President Clinton and made law.

Charities and their volunteers will remain unprotected from frivolous lawsuits.

Our municipalities will remain exposed to profit-seeking plaintiffs.

And the nonproducts area of private civil law in general will remain unreformed—3-year-olds and their mothers may still end up in court over a sandbox altercation.

In the last session I and some of my colleagues fought for more extensive, substantive, and programmatic reforms to our civil justice system. These were consistently turned back.

I believe at this point it is time for us to consider more neutral, procedural reforms, such as in the area of Federal conflicts rules, to rationalize a system we cannot seem to tame.

But I am certain, Mr. President, that this bill marks an important step toward a fairer, more reasonable and less expensive civil justice system.

This is why I am frustrated that President Clinton has threatened to veto this bill.

The President has stated repeatedly that he would support balanced, limited product liability reform. He has been singularly unhelpful in his opposition to more far-reaching reforms that would do more for American workers and consumers. But he has claimed that he would support product liability reform.

Now the President is claiming that this legislation is somehow unfair to consumers.

Mr. President, is a system in which fifty seven cents of every dollar awarded in court goes to lawyers and other transaction costs fair to consumers of legal services?

Is it really pro-consumer to have a system in which, as reported in a conference board survey, 47 percent of firms withdraw products from the marketplace, 25 percent discontinue some form of research, and 8 percent lay off employees, all out of fear of lawsuits?

Please tell me, Mr. President, are consumers helped by a system in which, according to a recent Gallup survey, one out of every five small businesses decides not to introduce a new product, or not to improve an existing one, out of fear of lawsuits?

The clear answer, I believe, is that consumers are hurt by our out-of-control civil justice system, a system which makes them pay more for less sophisticated and updated goods.

I respectfully suggest that President Clinton look beyond the interests of his friends among the trial lawyers to the interests of the American people as a whole.

If he looks to that interest he will find a nation hungry for reform, yearning to be freed from a civil justice system that is neither civil nor just, seeking protection from egregious wrongs, but not willing to sacrifice necessary goods, important public and voluntary services, and the very character of their communities to a system that no longer produces fair and predictable results.

If we in this chamber consult the interest of the people, Mr. President, we will pass this bill. If President Clinton consults that primary interest, he will sign the bill and make it law.

Mr. President, I yield the floor.

Mr. CONRAD. Mr. President, today's vote marks the return of the product liability issue to the Senate. It was about 1 year ago, May 10, 1995, when I voted for final passage of the Senate version of the product liability bill.

Yet before final passage, I voted against cloture four times. I voted against cloture because I had reservations about some of the provisions in the bill, including the absolute punitive damage cap and one way preemption clauses within the bill. However, after cloture was achieved, I voted in support of final passage in the hopes that the Senate and House conferees, working in conjunction with the White House, would reach a reasonable, balanced, and fair compromise.

Unfortunately, the conference report, rather than improving the bill, raises more questions and concerns. In the Senate bill, the language made it clear that the following would be excluded from the definition of product, electricity, water delivered by a utility, natural gas, or steam. However, the conference report adds an exception that in application, swallows the exclusion. The exception provides that if electricity, water delivered by a utility, natural gas, or steam is subject under State law to strict liability, the provisions of the product liability conference report apply. This is an expansion of the Senate bill.

Also, in the Senate bill, the provision regarding negligent entrustment was found in the applicability section and it provided that nothing in the title, the products liability bill, would apply to negligent entrustment cases. However, in the conference report, the negligent entrustment language is moved to the seller liability section and therefore negligent entrustment actions are not excluded from the provisions of the bill. Does the Senate really want to send a signal to those who, for example, serve alcohol to minors that their liability is substantially reduced?

The conference report language changes the Senate bill's provision on statute of repose by reducing the number of years and inserting ambiguity on the scope of products covered under statute of repose. The statute of repose is reduced from the Senate bill's period of 20 years to the conference report's period of 15 years. Changes in the definition of durable goods have raised ambiguity over whether the statute of repose remains applicable to only durable goods used in the workplace.

Finally, my concern remains about provisions which change State law only when that law is unfavorable to negligent manufacturers. If the goal is to create a uniform Federal law, the conference report should not make exceptions for States in the areas of statute of repose and punitive damage cap formulas.

I regret that I am unable to vote for cloture on this conference report. I remain supportive of reasonable and balanced product liability reform. My vote for final passage of the Senate bill on May 10, 1995, is a testament to my position.

Mr. BAUCUS. Mr. President, I rise in opposition to this conference report.

Like most Americans, I believe we would all be better off with fewer lawsuits. But, as we vote on this legislation, we must also ask ourselves if we are being fair to average Americans who are injured by dangerous products.

As I will discuss in more detail in just a moment, I believe my home State of Montana has done a fine job of discouraging unnecessary litigation and excessive damage awards. We have found a balance—a fair balance—that works for Montana and I believe other states should be allowed to the same.

BILL INTRUDES ON STATE RESPONSIBILITIES

This past December, I supported welfare reform legislation. My reason, in essence, was that a Federal program was broken and could be managed better by State governments.

The product liability bill before us now does just the opposite. It takes State laws which are not broken and subordinates them to a Federal law. It preempts the civil law of all 50 States and expands Federal powers into an area which, for two centuries, has been governed by the States. That is a very grave decision, and it is one we should not take unless there is absolutely no alternative.

Now, I am not an absolutist on this point. In some unusual cases—in particular, when States are violating the rights of individuals—the Federal Government should step in. For example, the Federal Government was right to intervene and eliminate segregationist Jim Crow laws through the Civil Rights Act and the Voting Rights Act.

But in this case, State governments are exercising their tort law responsibilities perfectly well. There is no reason for the Feds to take over.

THE MONTANA CASE

Let us look at the case of Montana to see why.

Our Chief Justice, the Honorable Jean Turnage, summed it up in a letter he wrote to me in 1994 in his capacity as President of the Conference of Chief Justices. In that letter he said:

Federal preemption of existing State product liability law at this point is an unwise and unnecessary intrusion upon the principles of federalism.

Justice Turnage is on very firm ground. Over time, Montana has drafted and amended our State laws to make sure they reflect our needs. For example, our legislature has imposed a punitive damage cap in medical malpractice cases. We also let small businesses register as limited liability companies to reduce their exposure to civil suits.

And Montana has already solved many of the other problems this product liability reform bill attempts to address.

LIABILITY ALREADY REFORMED IN MONTANA

First, we strike a fair balance between plaintiffs and defendants. The doctrine of joint and several liability is a good example.

Montana applies joint liability only when defendants are more than 50 percent responsible for a person's injury. Defendants who are less than 50 percent liable are accountable only for the amount of injury directly attributable to their wrongdoing.

This makes sense. Defendants should not be held jointly liable when they are only minimally responsible. Conversely, the injured should not go uncompensated when a defendant is more than half responsible.

So we have found a balance on liability. And this bill would destroy the balance. Because if it passes, Federal law would void Montana's joint and several liability statute completely.

MONTANA COURTS FAIR IN PUNITIVE DAMAGES

Second, look at Montana's treatment of punitive damages.

Again, we looked at the issue and found a solution that meets our needs. Our courts award punitive damages only in limited circumstances where a corporation clearly acts in a reckless way that endangers public safety.

We allow juries to award punitive damages only when a product manufacturer or seller is guilty of actual fraud or malice. Montana juries awarded these punitive damages a grand total of three times since 1965. And under H.R. 956, Montana juries would have great difficulty awarding punitive damages even when the defendant has shown total disregard and disrespect for the health and welfare of the consumer.

PROTECTING MONTANA WORKERS COMPENSATION LAW

Last but not least, I am deeply concerned about how this legislation could seriously harm Montana small businesses.

I recently asked Prof. David Patterson of the University of Montana School of Law to review this conference report and advise me of its potential impacts on Montana business. Professor Patterson is an acknowledged expert in Montana workers compensation law. He is also chairman of the State Bar Ethics Committee.

Professor Patterson has advised me that this conference report could have unfavorable, perhaps unintentional impacts * * * on Montana employers.

Specifically, he points to its provisions overriding existing Montana workers compensation law. As it is today, Montana workers compensation law protects employers from virtually all workplace-related products liability suits. But Professor Patterson believes the legislation before the Senate would eliminate or significantly errode these protections for Montana employers. I find that deeply troubling.

Mr. President, I ask that the full text of Professor Patterson's letter to be printed in the record immediately following these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAUCUS. Now, I believe that many companies have legitimate grievances with some of the State tort laws. But they should take the complaints to the States and do the job there. It is simply unnecessary—and really, it is wrong—to bring in Federal law enforcement and Federal courts to nationalize the tort laws. And its potential impacts on Montana workers compensation law show how dangerous—and costly for small businesses—this can become.

As Chief Justice Turnage said, it is unnecessary and unwise for Congress to try and take over these State responsibilities. Montana has managed its liability laws for over 100 years. We have exercised our rights in a responsible and balanced way. And we should be able to do so for the next hundred years.

And Congress, for its part, should get back to its real business and what the people expect—working together to balance the budget, raise the minimum wage, and help our families provide themselves and their children with a secure future.

EXHIBIT 1

THE UNIVERSITY OF MONTANA
SCHOOL OF LAW,
Missoula, MT.

Re H.R. 956 counterproductive for Montana employers.

Sen. MAX BAUCUS,
Senate Hart Building, Washington, DC.

DEAR SEN. BAUCUS: As a Montana law professor who teaches workers-compensation courses, I urge you to consider, before voting on H.R. 956, the ''Common Sense Product Liability Legal Reform Act of 1996,'' how surely and severely Section 111 of that bill would impact Montana employers and their workers compensation insurers.

Section 111(a)(3) of H.R. 956 clearly rewards manufacturers and sellers of defective workplace equipment who blame employers for injuries to their employees. Consequently, even employers who are otherwise immune from liability under Montana's workers compensation scheme will frequently be dragged into costly lawsuits between injured workers and the manufacturers or sellers of defective machinery.

H.R. 956 will also increase workers compensation premiums in Montana by forcing Montana employers and their workers compensation insurers to pay for workplace injuries which are currently the responsibility of manufacturers and sellers of defective products. Whatever its other merits, H.R. 956 undeniably shifts additional costs of workplace injuries caused by defective products onto Montana employers.

Finally, and perhaps most dangerously, H.R. 956 seriously jeopardizes the core immunities historically enjoyed by Montana employers. H.R. 956 forcibly injects the issue of employer fault into a previously no-fault state workers compensation scheme. The bill also expressly preempts all inconsistent state statutes—including those guaranteeing exclusive-remedy protection to employers. If (as seems likely) the Montana Supreme Court, in any of several pending appeals, finds limits to such a faultbased workers compensation system under Montana's Constitution, then H.R. 956 will automatically preempt the exclusive-remedy statutes now taken for granted by Montana employers.

Please consider carefully the unfavorable, perhaps unintentional, impacts of H.R. 956 on Montana employers. Please contact me if I can provide additional information or assistance. Thank you.

Respectfully,

Prof. DAVID PATTERSON.

The PRESIDING OFFICER (Mr. FRIST). Who yields time?

Mr. GORTON. Mr. President, I yield 2 minutes to the Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank my colleague from the State of Washington.

Mr. President, we are about now to vote on what I think is an enormously important bill in terms of human beings and in terms of the prospects for a better growing economy. However, I will be specific in my closing remarks.

There has been so much confusion about what is and what is not covered under product liability in the conference report, and I think that is because there has been a very deliberate attempt to mislead people during the course of this debate and prior to it.

There is one example I hope will enlighten my colleagues. Yesterday I received a letter from MADD, Mothers Against Drunk Driving, which incorrectly quoted the legislation and, from that, concluded that drunk driving cases would be protected. That is totally wrong. Drunk driving cases will not be covered by this bill. Here is what MADD said. The bill covers ''harm caused by a product or product use''. Here is the correct quote, Mr. President. The bill covers ''harm caused by a product.'' It is product liability that we are talking about—not product use but product. There is a huge difference.

Mr. President, many other well-meaning workers and people have been totally mislead about what this bill

covers. The issue of what is covered and what is not covered is this: Is it the product that causes harm? If yes, then it is covered in the bill. However, if the person using the product that causes harm—such as the driver of a car—the case is not covered by this bill.

Mr. HOLLINGS. Mr. President, I read the law, and it is properly quoted by MADD. We doublechecked because we heard some rumors. So checking it out, we found that the MADD position in opposition to this legislation is the same as I included in the RECORD, you can read the exact language which says ''any several action brought, or any theory of harm caused by a product or product use''—period, end quote. So they know what they are talking about.

Now to the confusion. You saw that 30-minute demonstration we had out here about strict liability and utilities. They wrote that in the double negative fashion because they did not want to say we are going to exempt strict liability. So they have done so by covering it in this bill.

Right to the point, they tell the gas company to go ahead and get reckless and not worry about punitive damages for the simple reason that now, having been written that way, you have to have malice.

I could cover a plethora of things. The solution is within the States. The Senator from Rhode Island was correct. We have been on it for 15 years. The State of Tennessee has acted. The State of South Carolina has acted. When we say it is a moderate, bipartisan bill, the opposition is moderate and bipartisan. There is bipartisan opposition because this goes totally against the grain. When I was sent up here some 29 years ago standing for States rights, here comes the crowd finally saying let us have education back to the States; Medicaid, let us have it back to the States; crime and block grants back to the States; welfare, the Governors say, come, give it to us, back to the States. The States are doing the job. The majority leader runs around with a tenth amendment in his pocket and pulls it out, and says we have government going back to the States. But the business crowd downtown wrote this sorry measure. It is not bipartisan with respect to the conference. We were never asked into that conference; never considered. That had not happened. That had not happened.

I found out about this on CBS when they talked about the silly case of women going into the men's room.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from Washington.

Mr. GORTON. Mr. President, this debate can come down to an example involving one individual, a young girl, and one company. The young girl is Tara Ransom, whose story is told in today's Wall Street Journal, and who with her parents has come to my office. Tara is one of 50,000 hydrocephalics in the United States with a condition that previously could not be treated at all and was a literal terror to its victims and to their parents.

She has, nonetheless, led a normal life, almost a normal life, due to a series of silicon shunts which have to be replaced every year or so due to her growth rate.

It is now becoming next to impossible for Tara to get such a silicon shunt because the one company, Dow-Corning, that is willing to manufacture it, is in bankruptcy largely due to product liability litigation and is threatened with class actions.

Dow-Corning simply manufactures the silicone. In one of these shunts its net return is $1 or $2. As the Presiding Officer as a physician knows, not every medical device works perfectly at all times and under all circumstances. I think it is almost inevitable that among those 50,000 hydrocephalics, or the numbers of thousands who use these shunts at some point or another, one of them is going to die, and there will be a threat of a lawsuit against every one who had anything to do with the shunt. The manufacturer of the material itself would be brought right into that lawsuit. Its liability, even if it wins, the cost of its attorney's fees will be far more than the gross sales price of all of the silicone it sold. So it will not sell the material. We now in some parts of the world have a black market in these shunts for exactly this reason.

So to save the trial lawyers, to deal with all of the abstractions we heard from here today, Tara Ransom and others like her may soon not be able to get the very devices that have allowed them to lead reasonably normal lives. If this bill passes—and I refer you to the statement of Senator MCCAIN—that will no longer be the case. It is one of the harms, one of the outrages, in our present legal system which will be controlled by this bill.

Mr. President, the Cessna airplane company—in the late 1970's general aircraft in the United States was being manufactured and shipped at the rate of more than 17,000 a year. By 1982, it was down to almost just more than half of that. By 1986, claims hit $210 million a year. By 1991, Piper went into bankruptcy. By 1993, 100,000 jobs had been lost in general aviation largely due to our present product liability system. By that time, fewer than 1,000 planes per year were being manufactured in the United States as against 17,000. In August 1994, this Congress passed the General Aviation Revitalization Act. All it consisted of was a statute of repose at 18 years for aircraft. That is all that was in that reform. Already there has been a rebound. The very next year more aircraft were manufactured than were manufactured before, and this year Cessna is building a $40 million plant to hire 2,000 people to get back into this business.

That, Mr. President, is what this debate is all about—whether or not young people and older people will be able to get medical devices that they need without the manufacturers being frightened out of the business by liability costs, and whether or not industries in the United States will be able to operate successfully to hire people to produce goods that people would like to buy.

We have a legal system now which has hurt our competitiveness, has driven up prices, has reduced the choices that the American people have, all to oblige a handful of trial lawyers. This bill is a modest beginning to create a redress in that balance and to restore the economy of the United States and to provide better products for more people at a lower cost more of the time. It is just as simple as that, Mr. President.

Mr. President, how much time remains?

The PRESIDING OFFICER. Twenty-four seconds.

Mr. GORTON. I yield the remainder of my time.

Have the yeas and nays been ordered?

The PRESIDING OFFICER. They are automatic.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 956, the Product Liability Fairness Act:

Slade Gorton, Trent Lott, Hank Brown, Chuck Grassley, Craig Thomas, Larry E. Craig, Frank H. Murkowski, Nancy L. Kassebaum, Mark Hatfield, Larry Pressler, Bob Smith, Jon Kyl, John H. Chafee, Conrad Burns, Pete V. Domenici, John McCain.

VOTE

The PRESIDING OFFICER (Mr. COHEN). The question is, Is it the sense of the Senate that debate be brought to a close? The yeas and nays are mandatory under rule XXII. The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 60, nays 40, as follows:

[Rollcall Vote No. 44 Leg.]

YEAS—60

Abraham	Dorgan	Johnston
Ashcroft	Exon	Kassebaum
Bennett	Faircloth	Kempthorne
Bond	Frist	Kohl
Brown	Glenn	Kyl
Burns	Gorton	Lieberman
Campbell	Gramm	Lott
Chafee	Grams	Lugar
Coats	Grassley	Mack
Cochran	Gregg	McCain
Coverdell	Hatch	McConnell
Craig	Hatfield	Moseley-Braun
DeWine	Helms	Murkowski
Dodd	Hutchison	Nickles
Dole	Inhofe	Nunn
Domenici	Jeffords	Pell